

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
YOUNG BROTHERS, LIMITED )  
For Approval to Amend its Sailing )  
Schedules for Kahului Harbor on )  
the Island of Maui, Kaunakakai )  
Harbor on the Island of Molokai, )  
and Kaunapau Harbor on the Island )  
of Lanai in Local Freight Tariff )  
No. 5-A. Transmittal No. 09-0001. )  
\_\_\_\_\_ )

DOCKET NO. 2009-0062

DECISION AND ORDER

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DECISION AND ORDER

By this Decision and Order, the commission approves the changes to YOUNG BROTHERS, LIMITED's ("Young Brothers" or "YB") sailing schedules for Kahului Harbor on the island of Maui, Kaunakakai Harbor on the island of Molokai, and Kaunalapau Harbor on the island of Lanai, as agreed-upon by Young Brothers and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), and subject to the conditions noted herein.<sup>1</sup> The changes to the County of Maui sailing schedules, as described in this Decision and Order, will take effect from May 1, 2009.

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<sup>1</sup>The Parties are Young Brothers and the Consumer Advocate, an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). No persons moved to intervene or participate in this proceeding.

I.

Background

Young Brothers is a water carrier authorized to transport property by barge between the islands of Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai. Young Brothers' intrastate water carrier operations are subject to the commission's jurisdiction. The shipment of goods under its regulated water carrier service is governed by its Local Freight Tariff No. 5-A ("Tariff 5-A").

A.

Docket No. 2008-0266

On December 19, 2008, Young Brothers, in In re Young Bros., Ltd., Docket No. 2008-0266 ("Docket No. 2008-0266"), filed its application for approval of a general rate increase.<sup>2</sup> In brief, Young Brothers seeks the commission's approval to increase its revenues by \$10,458,000, i.e., approximately 17.91 percent over revenues at present rates, based on the 2009 calendar test year and a proposed rate of return of 11.20 percent on the water carrier's average depreciated rate base (for its intrastate water carrier operations).

For the specific cargo types, Young Brothers proposes rate increases ranging from fifteen to twenty-five percent, including twenty-five percent for less than container load

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<sup>2</sup>Young Brothers' application filed in Docket No. 2008-0266 is currently pending before the commission. As in Docket No. 2009-0062, the parties in Docket No. 2008-0266 are Young Brothers and the Consumer Advocate.

("LCL") cargo service.<sup>3</sup> Concomitantly, Young Brothers anticipates working with its Molokai and Lanai customers to discuss a possible lesser increase in its rates for Molokai and Lanai LCL cargo than the proposed twenty-five percent increase.

Young Brothers, in support of its application for a general rate increase, states that as part of its ten-year strategic recapitalization plan, beginning in 2006 and continuing through 2015, it: (1) is committed to raising the quality of service to its customers by bringing on-line modernized vessels and equipment to facilitate the flow of cargo in Hawaii's economic stream; and (2) will retire and replace its smaller barges with larger, new flat-deck barges, which will provide more service capacity, increased reliability, reduced maintenance and repair costs, and enhanced fuel efficiency.

B.

Young Brothers' Application

Young Brothers, as a result of placing into service new, larger barges as part of its overall ten-year plan, proposes certain changes to its sailing schedules for Kahului Harbor on the island of Maui, Kaunakakai Harbor on the island of Molokai,

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<sup>3</sup>In addition, consistent with the proposed increases in its respective container and LCL rates, Young Brothers seeks to raise: (1) the minimum charge for platforms by fifteen percent; and (2) the minimum bill of lading by twenty-five percent.

and Kaumalapau Harbor on the island of Lanai.<sup>4</sup> These proposed changes are summarized by Young Brothers in Table 1 of its Application, as follows:<sup>5</sup>

<u>Destination Port</u>	<u>Current Sailing From Honolulu</u>	<u>Current Arrival</u>	<u>Proposed Sailing From Honolulu</u>	<u>Proposed Arrival</u>
Maui 1 <sup>st</sup> Sailing	Sunday (p.m.)	Monday (a.m.)	Monday (p.m.)	Tuesday (a.m.)
Maui Special/Molokai Stopover	Monday (p.m.)	Tuesday (a.m.)	<b>Eliminate</b>	<b>Eliminate</b>
Maui 2 <sup>nd</sup> Sailing	Tuesday (p.m.)	Wednesday (a.m.)	Wednesday (p.m.)	Thursday (a.m.)
Maui 3 <sup>rd</sup> Sailing	Thursday** (p.m.)	Friday** (a.m.)	Thursday** (p.m.)	Friday** (a.m.)

\*\*Denotes no changes to the current sailing schedule

Molokai 1 <sup>st</sup> Sailing	Monday (p.m.) (via Maui)	Tuesday (p.m.)	Sunday (direct)	Monday (a.m.)
Molokai 2 <sup>nd</sup> Sailing	Wednesday (p.m.)	Thursday (a.m.)	Tuesday (p.m.) (via Lanai)	Thursday (a.m.)
Lanai	Wednesday (p.m.)	Thursday (a.m.)	Tuesday (p.m.)	Wednesday (a.m.)

The underlying net effect of the proposed changes to Young Brothers' sailing schedules, if implemented, will result in the elimination of the weekly direct sailing from Maui to Molokai, designated as the Maui Special/Molokai Stopover sailing by Young Brothers. With the proposed elimination of the weekly direct sailing from Maui to Molokai, Young Brothers suggests that the most efficient route for the shipment of commodities from

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<sup>4</sup>Application; Exhibits; Verification; and Certificate of Service, filed on February 13, 2009 (collectively, "Application"). Young Brothers filed its Application pursuant to HRS § 271G-17, HAR § 6-61-94, and HAR 6-5-30.

<sup>5</sup>See also Young Brothers' Application, Table 2, Proposed Maui Sailing Schedule Changes; Table 3, Proposed Molokai Sailing Schedule Changes; and Table 4, Proposed Lanai Sailing Schedule Changes; and Young Brothers' letter, dated February 23, 2009, Proposed Changes to Maui, Molokai and Lanai Sailings (customer notification).

Maui to Molokai will be from Maui to Honolulu to Molokai. Shippers that utilize this route will incur: (1) a transshipment fee in Honolulu Harbor from Young Brothers, which the water carrier proposes to waive for a limited period; and (2) additional wharfage fees in Honolulu Harbor from the State of Hawaii ("State"), Department of Transportation, which Young Brothers is not authorized to waive.

The proposed changes to Young Brothers' sailing schedules, if implemented, will also result in: (1) the change in the once weekly barge arrival date into Lanai, from Thursday to Wednesday; and (2) the implementation of a weekly direct sailing from Lanai to Molokai, i.e., as part of the new Honolulu-Lanai-Molokai-Honolulu sailing.

C.

Initial Comments

Comments expressing concerns with or opposing the changes to the sailing schedules proposed by Young Brothers were submitted by Thompson Ranch, Diamond B Ranch, the Molokai Chamber of Commerce, the Maui Cattlemen's Association, the Hawaii Cattlemen's Council, Inc. (which includes the Maui Cattlemen's Association), and two members of the Maui County Council, including the Council Chair.<sup>6</sup> The concerns appeared to focus on Young Brothers' proposal to eliminate the weekly direct sailing from Maui to Molokai, which will purportedly result in increased shipping costs to the shipper and the delay in shipping cargo

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<sup>6</sup>See Commission's letters, dated March 2, 5, 9, 12, 13, and 16, 2009, with enclosures.

from Maui to Molokai, via Honolulu. Comments that affirmatively supported Young Brothers' proposed changes to its sailing schedules were submitted by Friendly Market Center and Kualapuu Market Ltd./Molokai Wines 'n Spirits Unlimited.<sup>7</sup>

By letter dated March 16, 2009, the Consumer Advocate noted that Young Brothers had provided the Consumer Advocate with additional information in support of the proposed tariff changes in response to informal information questions posed by the Consumer Advocate. Nonetheless, the Consumer Advocate stated that additional time was needed to adequately conduct additional discovery and to consider the comments submitted by the public. Accordingly, the Consumer Advocate requested additional time to submit its position statement.

On March 16, 2009, Young Brothers submitted to the commission copies of its responses to the Consumer Advocate's informal questions. According to Young Brothers, its informal responses:

. . . demonstrate that (A) the Molokai community will not be adversely affected and, in fact, will benefit by the sailing schedule change described in the Application (which includes the elimination of the "Maui Special/Molokai Stopover" described below), (B) the Molokai Chamber of Commerce, expressly joined by two grocery stores on Molokai, supports the Application, (C) YB has addressed all concerns stated by Maui ranchers who have transported cattle or have plans to transport

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<sup>7</sup>See Commission's letter, dated March 16, 2009, with enclosures. In addition, the Molokai Chamber of Commerce informed the commission that based on the big picture and "for the good of the Molokai community[,] it no longer seeks the suspension or postponement of Young Brothers' transmittal. See Molokai Chamber of Commerce's electronic mail, dated March 13, 2009.

cattle to Molokai, providing each with a feasible and affordable alternative to the direct Maui to Molokai sailing, and (D) it is in the public interest and in the interest of the health of the carrier that this Application be approved without delay.

. . . . .

The savings that would be realized by the sailing schedules are equal to nearly \$1.0 million annually for expenses relating to tug labor and tug fuel alone. See Application at 24-25. However, the savings are larger than this. This sailing schedule change, and the associated tug and barge assignments for YB's hub and spoke system allow YB to reduce its fleet to seven barges and five tugs from its present eight barges and six tugs (and to eliminate the tug and barge repair and maintenance expenses associated therewith, including the May 2009 drydock of the 26 year-old barge *Makahani* budgeted for \$510,000 (which will only add one more year of life to this vessel) and repair and maintenance of this vessel at \$7,500 per month (\$90,000 annually). These changes are an essential element of YB's plan to (1) lessen needed [less than container load ("LCL")] rate increases for Molokai and Lanai (as described above), (2) increase the [Island Agricultural Product] discount for containerized agriculture (as described in YB's Application for a General Rate Increase, filed December 19, 2008, in Docket No. 2008-0266) and (3) decrease the over-all average increase for all ratepayers. Moreover, the change of tug and barge assignments allows YB to (4) assign a barge with a house, the *Kamalahia*, to YB's barge sailings to Molokai and Lanai, a change beneficial to these LCL-dependent communities, (5) provide Molokai with better spacing between barge days (under the proposed schedule, Molokai barge days would be Monday and Thursday rather than the current Wednesday and Thursday), a change desired by many Molokai retailers and (6) have [an] efficient use of its assets, making, for example, maintaining two barge sailings to Molokai more affordable.

Young Brothers' responses, dated March 16, 2009, at 1 and 11.

D.

Suspension and Investigation

On March 17, 2009, the commission: (1) suspended Young Brothers' Application and opened an investigation to examine the merits of the water carrier's requests; and (2) stated its intent to schedule and hold public meetings on the islands of Oahu, Molokai, Maui, and Lanai for the purpose of providing interested persons with the opportunity to appear and comment on Young Brothers' Application.<sup>8</sup>

E.

Public Meetings

The commission held public meetings on the islands of Oahu and Molokai on March 30, 2009, on Maui on April 1, 2009, and on Lanai on April 2, 2009, to provide interested persons with the opportunity to appear and comment on Young Brothers' Application.<sup>9</sup> Representatives from the Molokai Chamber of Commerce, Friendly Market Center, and Kualapuu Market Ltd., appeared at the Molokai public meeting to reiterate their support for the proposed changes to Young Brothers' sailing schedules. Conversely, during the four public meetings, concerns with the proposed changes were raised or expanded upon by various businesses, shippers, and organizations.<sup>10</sup>

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<sup>8</sup>Order Suspending Application, filed on March 17, 2009.

<sup>9</sup>See Order Suspending Application (commission's intent to hold and schedule public meetings); Commission's letter, dated March 19, 2009 (Notice of Public Meetings); and Commission's Notice to Interested Persons, dated March 20, 2009.

F.

Consumer Advocate's Position

At the outset, the Consumer Advocate, in its Statement of Position filed on April 16, 2009,<sup>11</sup> notes that the proposed changes to Young Brothers' sailing schedules, if implemented, will impact the islands of Maui, Molokai, and Lanai, as follows:

**Maui Barge Arrival Days - Loss of one barge arrival day.**

Monday, Tuesday, Wednesday and [Friday] changed to Tuesday, Thursday and Friday.

**Molokai Barge Arrival Days - No loss of days but loses shipments sailing directly from Maui to Molokai.**

[Tuesday (Wednesday access to cargo)] and Thursday (from Oahu) changed to Monday (from Oahu) and Wednesday arrival (Thursday access to cargo) with Thursday's shipment coming from Oahu through Lanai and not from Maui.

**Lanai Barge Arrival Days - No loss of days but shipments arrive on Wednesday instead of Thursday.**

Consumer Advocate's Statement of Position, at 4 (boldface and emphasis in original).

The Consumer Advocate, in its review, "focused its analysis on the impact of the proposed amended sailing schedule on YB's customers on the islands impacted by the sailing schedule

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<sup>10</sup>Such entities included an airport concessionaire, the Blue Ginger Cafe, Canoes Lanai Restaurant, Diamond B Ranch, Golden State Foods, the Hawaii High School Rodeo Association, International Food and Clothing Center, the Maui Cattlemen's Association, and Pohakuloa Ranch. In addition, the commission, on March 31, 2009, received a follow-up written comment from the Maui County Council Chair, dated March 25, 2009, supporting the position of the Molokai merchants in not opposing the proposed changes to Young Brothers' sailing schedules. See Commission's transmittal memorandum, dated April 6, 2009, with enclosure.

<sup>11</sup>Consumer Advocate's Statement of Position; and Certificate of Service, filed on April 16, 2009 (collectively, "Statement of Position").

changes."<sup>12</sup> Upon the completion of its review, the Consumer Advocate states that it does not object to the commission's approval of Young Brothers' Application, "on the condition that those 'Actions to be Taken' on behalf of the Maui ranchers and impacted business owners by YB shall be adhered to and that the Commission seek a confirmation and/or status on those proposals provided by YB."<sup>13</sup> In addition, the Consumer Advocate reserves the right to: (1) "recommend an appropriate regulatory action to prevent the unreasonable subsidization of the costs associated with the concessions promised by YB to effectuate the proposed sailing modifications[;]" and (2) "carefully review the impact of the proposed amended sailing schedule on [YB's] revenues and operating expenses in YB's current rate case application in Docket No. 2008-0266."<sup>14</sup>

The Consumer Advocate, in support of its position, states:

For Lanai

1. The proposed changes to the Lanai sailing schedule primarily involve moving Lanai's barge arrival day from Wednesday to Thursday. The concerns raised by the Lanai businesses primarily involve the need to change how and when orders will

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<sup>12</sup>Consumer Advocate's Statement of Position, at 6.

<sup>13</sup>Consumer Advocate's Statement of Position, at 8. The "Actions to be Taken" refers to Young Brothers' proposed "Steps to address issues of COST and CATTLE STRESS raised by persons shipping or planning to ship cattle from Maui to Molokai[,] as set forth in pages 8 to 10 of its informal responses to the Consumer Advocate's information requests, dated March 16, 2009.

<sup>14</sup>Consumer Advocate's Statement of Position, at 8 n.10 and 9.

need to be made with respect to their Honolulu vendors. "The Consumer Advocate acknowledges these concerns but also recognizes that the benefits to these customers in the form of lower increases and potentially lower increases for LCL rates through related cost-savings appear to outweigh the burden on these businesses to amend their ordering schedules."<sup>15</sup>

2. "Due to the relatively small size of Molokai's Kaunakakai Harbor and Lanai's Kaunapali Harbor, YB is unable to safely enter either harbor without incurring additional cost for an additional tug. The Consumer Advocate is convinced that the proposed change [will] allow YB to eliminate the additional cost of accommodating a large barge sailing for a Maui - Molokai combined sailing by using a smaller barge to sail a combined Molokai - Lanai route."<sup>16</sup>

For Maui and Molokai

3. The Maui sailing schedule change involves eliminating one trip currently conducted between Honolulu Harbor and Kahului Harbor. The concerns with the proposed changes to the Maui and Molokai sailing schedules, in turn, are intertwined due to the proposed elimination of the direct sailing from Maui to Molokai. The overwhelming concern with the proposed changes involves the shipment of cattle from Maui to Molokai.

4. Initially, concerns were raised by the Molokai Chamber of Commerce and the Maui Cattlemen's Association. Subsequently, the Consumer Advocate received information from

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<sup>15</sup>Consumer Advocate's Statement of Position, at 7.

<sup>16</sup>Consumer Advocate's Statement of Position, at 7.

Young Brothers which demonstrates that the Molokai Chamber of Commerce does not object to the proposed changes. "The Consumer Advocate is also aware that YB has proposed numerous concessions to the Maui ranchers to address concerns directly related to the shipment of cattle including and not limited to additional costs for additional stops and cattle stress accommodations."<sup>17</sup>

5. "The Consumer Advocate is convinced that the cost saving[s] to be realized from the elimination of an additional Maui sailing and the use of a new larger barge, in addition to the concessions provided by agreement by YB to accommodate Maui ranchers outweighs any known customer inconveniences and is also convinced that those cost savings realized from the amended sailing schedule is just and reasonable, is in the public interest and enables YB to provide transportation services under honest, economical and efficient management."<sup>18</sup>

G.

Parties' Settlement Stipulation in Lieu of Evidentiary Hearing

On April 20, 2009, the Parties filed their "Stipulation on Settlement of all Issues in this Proceeding of Young Brothers, Limited and the Division of Consumer Advocacy," referred to by

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<sup>17</sup>Consumer Advocate's Statement of Position, at 8 (footnote and citation therein omitted).

<sup>18</sup>Consumer Advocate's Statement of Position, at 8.

the Parties as their Settlement Stipulation.<sup>19</sup> In reaching their global settlement, the Parties note:

1. "The Parties agree that the provisions of this Settlement Stipulation are binding between them with respect to the specific issues and matters to be resolved in this docket. In all respects, it is understood and agreed that the agreements evidenced in this Settlement Stipulation represent compromises by the Parties to fully and finally resolve all issues for the purpose of simplifying and expediting this proceeding, and are not meant to be an admission of either of the Parties as to the acceptability or permissibility of matters agreed to in this Settlement Stipulation."<sup>20</sup>
2. "The Parties reserve their respective rights, in other dockets or proceedings, to proffer, use, and defend different positions, arguments, methodologies, or claims regarding the matters agreed to in this Settlement Stipulation. Furthermore, the Parties agree that nothing contained in this Settlement Stipulation shall be deemed, or be interpreted, to set any type of precedent, or be used as evidence of either party's position in any future regulatory proceeding involving the Parties or any other party, except as necessary to enforce this Settlement Stipulation."<sup>21</sup>
3. "Each provision of this Settlement Stipulation is in consideration and support of all other provisions, and is expressly conditioned upon acceptance by the Commission of the matters expressed in this Settlement Stipulation in their entirety. In the event the Commission declines to adopt parts or all of the matters agreed to by the Parties and as set forth in this Settlement Stipulation, the Parties reserve the right to pursue any

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<sup>19</sup>On April 21, 2009, Young Brothers re-submitted a complete copy of Exhibit A to the Settlement Stipulation. A copy of Exhibit A is attached to this Decision and Order.

<sup>20</sup>Settlement Stipulation, at 7.

<sup>21</sup>Settlement Stipulation, at 7-8.

and all of their respective positions through further negotiations and/or additional filings and proceedings before the Commission."<sup>22</sup>

Ultimately, the Parties acknowledge that the commission "is not bound by the Settlement Stipulation, and that the settlement is subject to review by and approval of the Commission."<sup>23</sup>

The Parties: (1) stipulate that the Settlement Stipulation is in lieu of an evidentiary hearing; (2) waive the evidentiary hearing, any pre-hearing and post-hearing procedures, and any further discovery between the Parties, and request that the commission accept and approve such waivers; and (3) request an effective date of May 1, 2009, for Young Brothers' amended sailing schedules. The Parties, moreover, as part of their proposed procedural schedule, request the issuance of the commission's written decision by April 27, 2009.

The Settlement Stipulation represents the global settlement of all issues between Young Brothers and the Consumer Advocate, which is statutorily mandated to "represent, protect, and advance the interest of all consumers, including small businesses, of utility services."<sup>24</sup>

With respect to the merits of this proceeding, the Parties stipulate as follows:

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<sup>22</sup>Settlement Stipulation, at 29.

<sup>23</sup>Settlement Stipulation, at 2. Cf. In re Hawaiian Elec. Co., Inc., 5 Haw. App. 445, 698 P.2d 304 (1985) (an agreement between the parties in a rate case cannot bind the commission, as the commission has an independent obligation to set fair and just rates and arrive at its own conclusion).

<sup>24</sup>HRS § 269-51.

1. The proposed changes to Young Brothers' sailing schedules are just and reasonable, do not make, give, or cause any undue or unreasonable preference, prejudice, or advantage to any particular person, locality, region, district, island, or description of traffic, and do not subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage; continues to support the need, in the public interest, for adequate and efficient transportation service; and enables Young Brothers, under honest, economical, and efficient management, to provide transportation services.<sup>25</sup>
2. Maui's shipping needs can be accommodated with the proposed three weekly sailings, rather than the current four weekly sailings, which will effectively eliminate the weekly direct Maui-to-Molokai segment.<sup>26</sup> The elimination of the Maui Special/Molokai Stopover sailing and the deployment of only the larger, newly built barges to service Kahului Harbor, as well as combining the once weekly Lanai sailings with one of the two weekly Molokai sailings, will result in cost savings of nearly \$1 million annually and will directly benefit Young Brothers' Molokai and Lanai customers.<sup>27</sup>

In support of their settlement agreement, the Parties state:

1. By using one of its larger, newly built barges, Young Brothers can combine the first Maui sailing with the under-utilized Maui Special/Molokai Stopover sailing.<sup>28</sup>

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<sup>25</sup>Settlement Stipulation, Section III.B.1, at 12-13; Section III.C.1, at 21; and Section III.D.1, at 26.

<sup>26</sup>Settlement Stipulation, Section III.B.1, at 12.

<sup>27</sup>Settlement Stipulation, Section II.B.2, at 17-18; Section II.C.2, at 24; and Section II.D.2, at 27.

<sup>28</sup>Settlement Stipulation, Section III.B.1, at 13.

2. With the proposed elimination of the weekly direct sailing from Maui to Molokai, Young Brothers, after much discussion with the two Maui ranchers who ship or will ship cattle to Molokai for grazing, proposes the following measures to address the issues of cost and cattle stress, summarized as follows:

During the time that one rancher is building up his herd on Molokai, from May to July 2009 (which the other rancher has already done):

Young Brothers will provide an expedited transshipment schedule that will entail a Saturday (instead of a Sunday) departure from Honolulu to Molokai for arrival on Sunday (instead of on Monday). This schedule will require calling out a work crew on Sunday to unload and make the cattle available for pick-up.

With this expedited transshipment schedule, the cattle will not require being taken off Young Brothers' harbor facility in Honolulu.

Young Brothers' staff will arrange to provide the shipper's caretaker or tender access to the water carrier's Honolulu harbor facility on Saturday and will make available access to a water source for the cattle.

Young Brothers will waive the transshipment fees for a one-year period.

Young Brothers will offset additional costs to ranchers for such expenses as caretaker or tender charges and for feed and other possible items, up to \$175 per day.

#### Beginning August 1, 2009

While in transshipment at Honolulu Harbor, cattle will be placed under the covered portion of Young Brothers' barge pending departure to Molokai.

Young Brothers' staff will arrange to provide the shipper's caretaker or tender access to the water carrier's Honolulu harbor facility on Saturday and Sunday and will make available access to a water source for the cattle. This arrangement will

avoid the need to truck cattle off Young Brothers' Honolulu harbor facility.

As stated above, Young Brothers will waive the transshipment fees for a one-year period.

See Settlement Stipulation, at 14-16; see also Settlement Stipulation, Exhibit A, Young Brothers' Proposal to Maui Cattlemen on Steps to Address Issues of Cost and Cattle Stress.<sup>29</sup>

3. Young Brothers has confirmed with the State Departments of Transportation and Agriculture and with the United States Department of Agriculture that these agencies have no objections to Young Brothers' proposal.<sup>30</sup>

4. Young Brothers also offers to re-visit with the Maui ranchers on an annual basis, or more frequently, if particular issues require discussion.<sup>31</sup>

5. Other current direct shipments from Maui to Molokai will not be significantly affected. For calendar year 2008, Young Brothers transported 118,904 tons of cargo to Molokai, of which 24,289 tons (approximately 20.42 percent) was transported on the Maui-to-Molokai sailing. The Maui-to-Molokai cargo includes shipments from: (A) Kula Produce Company, Ltd., on Maui (a corporate affiliate of Armstrong Produce, Ltd., on Oahu); and (B) Costco on Maui. Both of these shippers, which have Oahu warehouses, do not oppose the proposed elimination of the Maui-to-Molokai sailing.<sup>32</sup>

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<sup>29</sup>Exhibit A is a copy of the "Actions to be Taken" the Consumer Advocate referred to in its Statement of Position.

<sup>30</sup>Settlement Stipulation, at 16.

<sup>31</sup>Settlement Stipulation, at 16.

6. With respect to Molokai-destined cargo from Maui in general (including the shipment of cattle), Young Brothers' Application includes a one-year waiver of the transshipment fees. However, shippers must still pay wharfage fees, which are assessed by the State Department of Transportation.<sup>33</sup>

7. The costs associated with the sailing to Kahului Harbor that Young Brothers proposes to eliminate, estimated at \$810,502 in total tug and barge savings for the 2009 test year, are set forth in Exhibit C of the Settlement Stipulation.<sup>34</sup> "Deployment of [Young Brothers'] new, larger barges will permit early retirement of outdated barges and tugs, allowing [Young Brothers] to avoid expensive drydocking and other scheduled maintenance that would not add incrementally and proportionately to the service lives of these aging vessels."<sup>35</sup> "[O]ne of the beneficiaries of these cost savings will be [Young Brothers'] Molokai and Lanai customers, for whom [Young Brothers] will propose and support a reduction of the 25 percent rate increase in LCL cargo shipments to 12 percent in [Young Brothers] general rate increase filing in Docket No. 2008-0266."<sup>36</sup>

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<sup>32</sup>Settlement Stipulation, at 16-17.

<sup>33</sup>Settlement Stipulation, at 17.

<sup>34</sup>Settlement Stipulation, at 18; and Exhibit C, Tug Operations - Kahului Sailing Schedule Changed, 2009 Test Year.

<sup>35</sup>Settlement Stipulation, at 18.

<sup>36</sup>Settlement Stipulation, at 18; see also *id.* at 24-25 and 27-28 (the resulting cost savings will contribute to lowering Young Brothers' revenue requirement in Docket No. 2008-0266, including lowering the requested increase in LCL rates for shipments to Molokai and Lanai).

8. The proposed schedule changes for Molokai "will result in cargo availability days to be spread out during the week (on Monday and Thursday), rather than to occur back-to-back on Wednesday and Thursday. For Molokai merchants, this arrangement allows [for] better stocking of inventory."<sup>37</sup>

9. The elimination of the Maui-to-Molokai direct sailing will not reduce the availability of locally grown fresh or perishable food products on Molokai. "Except for a very small percentage, perishable food products transported to Molokai come from outside of Hawaii and, to a lesser extent, from Oahu (or transshipped through Oahu from other neighbor islands)."<sup>38</sup>

During 2008, 63 tons of locally grown fresh/perishable food products were shipped to Molokai on the Maui-to-Molokai direct sailing, which represented approximately 0.0005 of one percent of the total amount of cargo shipped to Molokai, and \$2,567 in revenues for Young Brothers.<sup>39</sup>

10. With respect to Kaumalapau Harbor on Lanai:

Under the proposed schedule, cargo availability on Lanai would move from Wednesday to the next day, Thursday. [Young Brothers] and the Consumer Advocate acknowledge the concerns raised by two Lanai businesses about their reluctance to change established ordering patterns with respect

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<sup>37</sup>Settlement Stipulation, at 21 (citing to the comments by Friendly Market Center, Kualapuu Market Ltd., and the Molokai Chamber of Commerce).

<sup>38</sup>Settlement Stipulation, at 22.

<sup>39</sup>Settlement Stipulation, at 22-23; see also *id.* at 24 (during 2008, Young Brothers delivered 13.2 tons of locally grown fresh/perishable food products on refrigerated pallets from Maui to Molokai, which represented 0.0006 of one percent of all cargo refrigerated cargo shipped from Maui to Molokai).

to their Honolulu vendors. With assistance from [Young Brothers'] sales representatives, a transition to modified ordering patterns can be facilitated. [Young Brothers'] representatives are familiar with Honolulu merchants who ship goods to Lanai and can coordinate directly with these merchants and Lanai consignees . . . .

Settlement Stipulation, at 26.

The Parties, in conclusion, jointly request that the commission:

1. Approve the Settlement Stipulation in lieu of an evidentiary hearing;

2. Approve the Parties' waiver of the evidentiary hearing, any pre-hearing and post-hearing procedures, and any further discovery between the Parties;

3. Approve the tariff changes proposed by Young Brothers in YB-Ex-1 of its Application, "to be effective on May 1, 2009, provided that the provision proposed to be added to rule no. 180 shall reflect a waiver of transshipment fees for the period commencing on May 1, 2009, and ending on April 30, 2010, on commodities originating in the Port of Kahului and destined for the Port of Kaunakakai;"<sup>40</sup>

4. "Approve YB's proposal set forth in Exhibit A [of the Settlement Stipulation] to Maui cattlemen on steps to address issues of cost and cattle stress, provided that the Consumer Advocate reserves the right to recommend an appropriate regulatory action to prevent the unreasonable subsidization of the costs associated with the concessions promised by YB

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<sup>40</sup>Settlement Stipulation, at 28.

to effectuate the proposed sailing schedule changes;"<sup>41</sup> and

5. "Direct YB to reflect normalized cost savings resulting from the proposed sailing schedule changes in its general rate increase application in Docket No. 2008-0266."<sup>42</sup>

H.

#### Issues

The issues in this proceeding, as agreed-upon by the Parties, are:

1. Whether the Maui County sailing schedule changes to Young Brothers' Tariff 5-A as proposed in its Application are just and reasonable, do not make, give, or cause any undue or unreasonable preference, prejudice, or advantage to any particular person, locality, region, district, island, or description of traffic, and do not subject any particular person, locality, region, district, island or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage. (See HRS §§ 271G-2, 271G-16(b) to (e), and 271G-17(d))
2. Whether the proposed tariff changes support the need, in the public interest, for adequate and efficient transportation service. (See HRS §§ 271G-2 and 271G-16(b) and (e))
3. Whether the proposed tariff changes enable Young Brothers, under honest, economical, and efficient management, to provide transportation services. (See HRS § 271G-16(e))

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<sup>41</sup>Settlement Stipulation, at 28-29.

<sup>42</sup>Settlement Stipulation, at 29.

## II.

### Discussion

The policy of the Hawaii Water Carrier Act, HRS chapter 271G, as set forth in HRS § 271G-2, provides:

**Declaration of policy.** The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, by water within the State or between points within the State, constitutes a business affected with the public interest. It is intended by this chapter to provide for fair and impartial regulation of such transportation, so administered as to recognize and preserve the inherent advantages of such transportation, in the interest of preserving for the public the full benefit and use of the waterways consistent with the public safety and the needs of commerce: to promote safe, adequate, economical, and efficient service among carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without undue discrimination, undue preference or advantage, or unfair or destructive competitive practices, all to the end of developing, coordinating, and preserving a sound transportation system by water. This chapter shall be administered and enforced with a view to carrying out the above declaration of policy.

HRS § 271G-2.

HRS §§ 271G-16 and 271G-17 provide in relevant part:

**Rates, fares and charges of common carriers  
by water. . . . .**

(b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any water carrier to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person or body politic may make complaint in writing to the commission that any such rate, fare, charge, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demand, charged, or collected by any common carrier or carriers by water for transportation, or any rule, regulation, or practice whatsoever of the carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful rule, regulation, or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with

the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(f) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

HRS § 271G-16.

**Tariffs of water carriers.** (a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a). The notice shall plainly state the change proposed to be made and the time when it will take effect. The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless

the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts.

The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement in writing of its reasons therefor, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation or practice. From the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(e) When a rate increase application is filed, . . . .

HRS § 271G-17; see also HRS § 271G-23 (water carrier's burden of proof); HAR §§ 6-61-94 (water carrier tariff changes);

6-65-5 (water carrier tariff change - posting); and 6-65-30 (water carrier tariff changes or revisions).

Under Young Brothers' hub-and-spoke system: (1) Honolulu Harbor serves as the hub or home port of the water carrier's operations, with sailings directly from the home port to a neighbor island port (i.e., a spoke) and back to the home port; and (2) the current weekly direct sailing from Maui to Molokai is the only scheduled sailing between two neighbor island ports.<sup>43</sup> According to Young Brothers, "[t]he original purpose of the Maui Special/Molokai Stopover was to accommodate the pineapple industry in Molokai."<sup>44</sup>

Young Brothers asserts that the proposed changes to its sailing schedules, if implemented, will result in cost savings of nearly \$1 million annually, which "will contribute to lowering YB's revenue requirements in its current general rate filing, with a goal of decreasing its average rate increase."<sup>45</sup> In this regard, Young Brothers' reasons that the cost savings, estimated at \$810,502 in total tug and barge savings for the 2009 test year, will result in reducing the requested increase in LCL rates for its Molokai and Lanai customers, from twenty-five percent to twelve percent. Specifically, the deployment of Young Brothers' new, larger barges will result in the early retirement of its older barges and tugs, thereby avoiding expensive drydocking and

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<sup>43</sup>See Young Brothers' letter, dated March 16, 2009, at 2; and Settlement Stipulation, at 16 n.2.

<sup>44</sup>Young Brothers' letter, dated March 16, 2009, at 2; and Settlement Stipulation, at 16 n.2.

<sup>45</sup>Application, at 24.

other scheduled maintenance that would not add incrementally and proportionately to the service lives of these aging barges and tugs.

Young Brothers is presently in the midst of implementing its ten-year strategic recapitalization plan, by which it is replacing its smaller, older barges with larger, new flat-deck barges (designed to carry forty percent more cargo).<sup>46</sup> Thus, as part of its pending general rate case proceeding, Young Brothers seeks to recover the investments made to date pursuant to its ten-year plan. According to Young Brothers:

. . . . Over its strategic plan period of ten years (2005 to 2015), Young Brothers has targeted the majority of its planned investment of \$186 million for the replacement of its vessel fleet. At the completion of this investment period (that is, by the year 2015), Young Brothers' barge fleet age will be reduced from a current average of 26 years to 7 years.

Application, at 3.

The new, larger barges are designed to provide "more service capacity, increased reliability, reduced maintenance and repair costs, and enhanced fuel efficiency."<sup>47</sup> The proposed changes to its County of Maui sailing schedules are intended to incorporate the efficiencies of Young Brothers' newly built flat-deck barge no. 4, the Ha'aheo (projected in-service date of 2009), with the efficiencies of the three newly built flat-deck

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<sup>46</sup>The dimensions of Young Brothers' current standard barge platform are 286-feet by 76-feet, with a forward house. The dimensions of Young Brothers' newer barges are 340-feet by 90-feet, flat, or open-deck. Application, at 4-5.

<sup>47</sup>Application, at 4.

barges already in service, the Ho'omaka Hou, Maka'ala, and Kala'enalu.

To achieve the cost savings and increase in efficiencies associated with the deployment of the new barges, Young Brothers asserts that adjustments to its current sailing schedules are needed to synchronize the sailings of its larger barges; minimize idle assets; and mesh with the sailings of its smaller barges to Lanai and Molokai. Thus:

1. For Maui, Young Brothers proposes to dedicate one of its newly built larger barges for all three weekly regulated sailings, resulting in the elimination of the weekly Maui Special/Molokai Stopover sailing. Young Brothers explains that by deploying one of its new, larger barges for Maui, it "could not safely enter Kaunakakai Harbor on Molokai without incurring the additional substantial cost of another tug (in addition to the towing tug) to assist the large barge into port and, even with a second tug, under certain adverse weather conditions, a larger new-built barge cannot safely enter Kaunakakai Harbor and would have to bypass Molokai."<sup>48</sup> Accordingly, Young Brothers seeks to eliminate the directly weekly sailing from Maui to Molokai.

2. For Molokai and Lanai, "considering the compatible profile of freight destined for Molokai and Lanai and similar harbor constraints on both islands, Young Brothers proposes to combine the [current] one weekly sailing to Lanai with the [current] second weekly sailing to Molokai . . . . Young Brothers

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<sup>48</sup>Application, at 8; and Settlement Stipulation, at 9-10; see also id. at 27.

would be using one of its smaller barges for this proposed [Honolulu-Lanai-Molokai-Honolulu] sailing, thereby precluding the need for a tug-assist to enter Kaunakakai Harbor. The resulting schedule retains two weekly sailings to Molokai and one weekly sailing to Lanai."<sup>49</sup>

Taken as a whole, the commission finds that the proposed changes to Young Brothers' sailing schedules, as agreed-upon by the Parties, appear: (1) consistent with the need for adequate and efficient inter-island water transportation service for cargo and commodities; and (2) just, reasonable, and in the overall public interest. The commission, thus, answers in the affirmative the issues raised in this proceeding.

Here, the proposed changes to Young Brothers' sailing schedules will retain the two weekly sailings to Molokai, and the weekly sailing to Lanai, with the water carrier utilizing its smaller barge for the newly combined Honolulu-Lanai-Molokai-Honolulu sailing. Meanwhile, Young Brothers, as a cost savings and efficiency measure, will transition to utilizing one of its newer, larger barges (with forty percent more cargo capacity) for the three weekly sailings to Maui. While the new County of Maui sailing schedules will result in the elimination of the weekly direct sailing from Maui to Molokai,<sup>50</sup> Maui shippers

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<sup>49</sup>Application, at 8, 16, and 20; and Settlement Stipulation, at 10; see also id. at 20 and 27.

<sup>50</sup>During calendar year 2008: (1) Young Brothers transported 118,904 tons of cargo to Molokai, of which 24,289 tons was transported on the Maui Special/Molokai Stopover sailing; and (2) the amount of locally grown fresh/perishable food products shipped directly from Maui to Molokai was 63 tons, which represented 0.0005 of one percent of the total amount of cargo

will still be able to ship cargo to Molokai via Honolulu Harbor, albeit by incurring transshipment and wharfage fees. Concomitantly, as one of its mitigation measures, Young Brothers will waive the assessment of the transshipment fee for a one-year period, and agrees to additional mitigation measures for Maui ranchers.

Indeed, the proposed changes to the Maui County sailing schedules are supported by the overwhelming majority of Molokai representatives who expressed their views to the commission.<sup>51</sup> Under the present twice a week sailing schedule to Molokai, cargo is available for pick-up at Kaunakakai Harbor on Wednesdays and Thursdays. With the proposed changes to the sailing schedules, if implemented, cargo will be available for pick-up at Kaunakakai Harbor on Mondays and Thursdays. Thus, the Molokai representatives support the proposed elimination of back-to-back days of cargo pick-up days on Molokai. As additional support, the Molokai representatives refer to Young Brothers' pledge, in its general rate case proceeding (Docket No. 2008-0266), to explore the possibility of reducing its proposed twenty-five percent increase in its LCL rates for its Molokai and Lanai-based customers.

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shipped to Molokai, or approximately \$2,567 in operating revenues for Young Brothers. Young Brothers' responses, dated March 16, 2009, at 3-4; and Exhibit A thereto; and Settlement Stipulation, at 17 and 22-23.

<sup>51</sup>See comments by Friendly Market Center, Kualapuu Market Ltd./Molokai Wines 'n Spirits Unlimited, the Maui County Council Chair, and the Molokai Chamber of Commerce.

While concerns with or objections to the proposed changes to the Maui County sailing schedules were expressed by an Oahu shipper, various businesses and organizations that ship cargo between Maui and Molokai (including cattle ranchers and the Hawaii State Rodeo Association), and Lanai-based businesses, Young Brothers, as noted above, has attempted to accommodate the concerns raised by the cattle ranchers/organizations and the Lanai-based businesses.<sup>52</sup>

In balancing the various interests, the Consumer Advocate states that the benefits of the proposed changes outweigh the burden on the affected businesses to amend their ordering schedules and any known customer inconveniences. The commission agrees with the Consumer Advocate, and thus, approves the proposed changes to Young Brothers' sailing schedules, as agreed-upon by the Parties, subject to the following conditions:<sup>53</sup>

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<sup>52</sup>On the other hand, the Parties, in their Settlement Stipulation, do not appear to touch upon the concerns raised by the Oahu shipper or the Hawaii State Rodeo Association. Meanwhile, the Consumer Advocate, in its Statement of Position: (1) did not object to the commission's approval of Young Brothers' Application, subject to the adoption of the water carrier's proposed "concessions" to accommodate the shipment of cattle from Maui to Molokai; and (2) with respect to the Lanai-based businesses, reasons that "the benefits to these customers in the form of lower increases and potentially lower increases for LCL rates through related cost-savings appear to outweigh the burden on these businesses to amend their ordering schedules." Consumer Advocate's Statement of Position, at 7.

<sup>53</sup>The Consumer Advocate, as set forth in its Statement of Position and in the Settlement Stipulation, reserves the right to recommend an appropriate regulatory action to prevent the unreasonable subsidization of costs associated with the concessions Young Brothers will implement as part of the changes to the County of Maui sailing schedules.

1. Young Brothers shall implement the concessions set forth in Exhibit A of the Settlement Stipulation.

2. Young Brothers shall continue to work with the affected Maui ranchers on an annual or more frequent basis should particular issues arise that require discussion and resolution.

3. Young Brothers shall work with the affected Lanai-based businesses and others, including the Honolulu shipper, in facilitating the transition to modified ordering patterns.

In conclusion, the commission is cognizant that a minority of shippers and businesses may still have concerns with or opposition to the proposed changes. In response, the commission notes that the conditions imposed herein are designed to reasonably address the concerns raised.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The proposed changes to Young Brothers' sailing schedules for Kahului Harbor on the island of Maui, Kaunakakai Harbor on the island of Molokai, and Kaumalapau Harbor on the island of Lanai, as agreed-upon by the Parties, are approved, to take effect from May 1, 2009, subject to the following conditions:

A. Young Brothers shall implement the concessions set forth in Exhibit A of the Settlement Stipulation.

B. Young Brothers shall continue to work with the affected Maui ranchers on an annual or more frequent basis should particular issues arise that require discussion and resolution.

C. Young Brothers shall work with the affected Lanai-based businesses and others, including the Honolulu shipper, in facilitating the transition to modified ordering patterns.

D. Young Brothers, in Docket No. 2008-0266, shall reflect its normalized cost savings which result from the changes to the County of Maui sailing schedules approved herein.

2. Unless ordered otherwise by the commission, during the next twelve-month period, Young Brothers shall report on its progress and efforts in satisfying the applicable conditions and requirements set forth in paragraph 1, above. Young Brothers' quarterly status reports: (A) shall be due by August 3, 2009; November 2, 2009; February 1, 2010; and May 3, 2010; and (B) each report shall include as exhibits written comments from the affected shippers and businesses to Young Brothers, commenting on Young Brothers' progress and efforts in satisfying the applicable conditions and requirements.

3. By April 30, 2009, Young Brothers shall file its revised tariff sheets for Tariff 5-A, with the applicable issued and effective dates, which: (A) implement the changes in the County of Maui sailing schedules approved by the commission, including the mitigation measures set forth in Exhibit A of the Settlement Stipulation; and (B) include the provisions that

reflect the waiver of the transshipment fees for a one-year period, from May 1, 2009 to April 30, 2010, for commodities originating from Kahului Harbor and destined for Kaunakakai Harbor.

4. The failure to comply with any of the requirements set forth in paragraphs 1 to 3, above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by law.

5. The pre-hearing conference, evidentiary hearing, and related post-hearing matters are cancelled as moot.

DONE at Honolulu, Hawaii APR 27 2009.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By John E. Cole  
John E. Cole, Commissioner

APPROVED AS TO FORM:

[Signature]  
By  
Leslie H. Kondo, Commissioner

Michael Azama  
Michael Azama  
Commission Counsel

2009-0062.cp

April 21, 2009

FILED  
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PUBLIC UTILITIES  
COMMISSION

State of Hawaii  
PUBLIC UTILITIES COMMISSION  
Department of Budget and Finance  
465 South King Street  
Kekuanao'a Building, First Floor  
Honolulu, Hawaii 96813

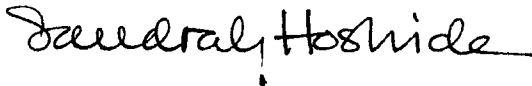
Re: **In re Young Bros., Docket No. 2009-0062 (Application of Young Brothers, Limited for Approval to Amend its Sailing Schedules for Kahului Harbor on the Island of Maui, Kaunakakai Harbor on the Island of Molokai, and Kaunapali Harbor on the Island of Lanai In Local Freight Tariff No. 5-A); re-submission of Exhibit A (without truncation) to Stipulation on Settlement of All Issues in This Proceeding**

Dear Commissioners:

Young Brothers, Limited respectfully re-submits Exhibit A to Stipulation on Settlement of All Issues in This Proceeding filed on April 20, 2009. As printed and originally submitted, the exhibit truncates information along the right-hand margin of the document.

We apologize for any inconvenience this printing error may have caused. If you have any questions, please call me at 543-94919.

Very truly yours,



Sandra Y. Hoshida  
Manager of Government Affairs

c: Division of Consumer Advocacy (2 copies)

## **EXHIBIT A**

**Young Brothers, Limited Proposal to Maui Cattlemen on  
Steps to Address Issues of Cost and Cattle Stress**

**Steps to address issues of *COST* and *CATTLE STRESS*  
raised by persons shipping or planning to ship cattle from Maui to Molokai**

**for the period from April 1, 2009 to July 31, 2009**

**(To be taken if PUC approves pending application to change Maui County sailing schedule, including elimination of "Molokai stopover" between Kahului and Honolulu)**

Need Stated by Cattlemen:	Action to be Taken
<p>1. The schedule, as proposed by YB, includes a Friday departure from Maui, a Saturday arrival in Honolulu, a Sunday departure from Honolulu and a Monday arrival in Molokai. We refer to this schedule in this table as the "<b><u>Regular Schedule</u></b>". As stated in particular by Brendan Balthazar of Diamond B Ranch, he wants to reduce the time between the cattle's departure from Maui and the arrival in Molokai during the time that he is building up his herd on Molokai through the end of July 2009. <u>Mr. Balthazar asks "to give the cattle a morning arrival and an evening departure."</u></p> <p>The other rancher that intends to use Molokai Ranch lands, Jerry Sakugawa, has already established his herd on Molokai.</p>	<p>1. During the period between May 1, 2009 and July 31, 2009, YB will arrange for seven sailings that include a Friday departure from Maui, a <i>Saturday morning arrival in Honolulu, a Saturday evening departure from Honolulu and a Sunday morning arrival in Molokai</i> (the "<b><u>Expedited Schedule</u></b>") as requested by Mr. Balthazar. The Expedited Schedule includes substantial additional expense for YB as it requires calling out a work crew on a Sunday to unload and make available the cattle for pick-up. The dates of the Expedited Schedule will be:</p> <p align="center">May __, 2009 and May __, 2009 June __, 2009, June __, 2009 and June __, 2009 July __, 2009 and July __, 2009</p> <p>Please note: Because of the substantial additional expense of the Expedited Schedule and the arrangements that must be made to accommodate it, the shipper must contact Keith Kiyotoki one week prior to the shipment date to confirm that the shipper intends to ship cattle and to provide YB with number/size of containers. If no Maui rancher provides YB with one week notice that such rancher intends to ship cattle on the specified date, then YB will maintain the Regular Schedule.</p> <p>As stated above, the availability of the Expedited Schedule will end on the last Saturday of the month of July 2009.</p> <p>[Note: We have left blanks for the seven specific dates and intend to work out these specific dates with the Maui Cattlemen's Association.]</p>
<p>2. Arrangements in Honolulu must avoid any need for trucking cattle off of harbor premises in Honolulu.</p>	<p>2. As noted in Action #1 above, there will be no need to truck the cattle off of the harbor premises in Honolulu.</p>
<p>3. Customer's caretaker or tender needs to access cattle in Honolulu to feed and water.</p>	<p>3. Young Brothers staff will arrange to provide customer's caretaker or tender access on Saturday.</p>
<p>4. Caretaker in Honolulu needs access to water that may be hosed into cattle container</p>	<p>4. Young Brothers staff will make available access to water source at Pier 40 (where <i>Kamaluhia</i> will be berthed).</p>
<p>5. Need to avoid additional cost of transshipment.</p>	<p>5. Young Brothers transshipment fees will be waived for one year (for the period between April 1, 2009 and April 1, 2010).</p>
<p>6. Need to mitigate other additional costs that may be incurred by HNL stopover, such as costs of caretaker/tender, additional feed &amp; possible other costs.</p>	<p>6. Young Brothers will offset such costs to each Maui rancher (with a lease or right to use pasture land on Molokai) in the amount of \$150 per day for each Saturday that such shipper's cattle remain in YB's Honolulu yard during the period between May 1, 2009 and July 31, 2009.</p>

<p align="center"><b>Steps to address issues of <i>COST</i> and <i>CATTLE STRESS</i> raised by persons shipping or planning to ship cattle from Maui to Molokai <u>beginning August 1, 2009</u></b></p> <p align="center"><b>(To be taken if PUC approves pending application to change Maui County sailing schedule, including elimination of "Molokai stopover" between Kahului and Honolulu)</b></p>	
<b>Need Stated by Cattlemen:</b>	<b>Action to be Taken</b>
1. Cattle must be in a covered and ventilated area during Honolulu stopover	<p>1. While cattle are in Honolulu, Young Brothers will place cattle container in the covered portion (the "house") of the barge <i>Kamaluha</i> (or a similar barge with a similar house), pending the departure to Molokai.</p> <p>Please note: Because of the arrangements that must be made to accommodate this action, we ask that the shipper contact Keith Kiyotoki one week before shipment to confirm dates and number/size of containers. YB has put no expiration date on this action, but will review all of the arrangements stated in this table with the Maui Cattlemen's Association annually with a target of January of each year.</p>
2. Arrangements in Honolulu must avoid any need for trucking cattle off of harbor premises.	2. As noted in Action #1 above, there will be no need to truck the cattle off of the harbor premises
3. Customer's caretaker or tender needs to access cattle in Honolulu to feed and water.	3. Young Brothers staff will arrange to provide customer's caretaker or tender access on Saturday and Sunday. YB has put no expiration date on this action, but will review all of the arrangements stated in this table with the Maui Cattlemen's Association annually with a target of January of each year.
4. Caretaker in Honolulu needs access to water that may be hosed into cattle container	4. Young Brothers staff will make available access to water source at Pier 40 (where <i>Kamaluha</i> will be berthed). YB has put no expiration date on this action, but will review all of the arrangements stated in this table with the Maui Cattlemen's Association annually with a target of January of each year.
5. Need to avoid additional cost of transshipment.	5. Young Brothers transshipment fees will be waived for the period between April 1, 2009 and April 1, 2010).
6. Need to accommodate cattle being shipped to the Molokai Slaughterhouse.	6. We understand that there will be three herds established on Molokai (the Diamond "B" herd, the Sakugawa herd and the former Molokai Ranch herd now held by Jimmy Duvauchelle). If there is a need for cattle to be shipped specifically to the Molokai Slaughterhouse, which we understand is a County facility, we will work with the County and ensure that there is no additional expense to the County that results from a lack of a direct barge sailing from Maui to Molokai. As long as this County slaughterhouse remains active, we will meet and review annually, with the appropriate County official, the arrangements necessary to accommodate the slaughterhouse (with a target of January of each year of this meeting).

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
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